IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33390 of 2007(Y)

PETITIONER:

M/S.ESCAPADE RESORTS PVT.LTD,
UNIT KALARI KOVILAKAM,KOVILAKOM MUKKU,KOLLENGODE,
PALAKKAD - 678 506,REPRESENTED BY ITS DIRECTOR
MR.MICHAEL DOMINIC.

BY ADV. SRI.JOSEPH MARKOSE
SRI.JOSEPH KODIANTHARA

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES,PALAKKAD.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES,KOCHI.

BY GOVT. PLEADER MR. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 33390 OF 2007 Y
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Dated this the 15th November, 2007

J U D G M E N T

Aggrieved by Ext. P1 series of orders levying penalty on the petitioner, appeals and stay petitions were filed before the 2nd respondent. Considering the stay petition, the 2nd respondent passed Ext. P5 order granting stay on condition that the petitioner remits 50% of the penalty imposed for the years 2004-05 to 2007-08 under the Kerala Tax on Luxuries Act, 1976 and furnish security for the balance amount. It is challenging Ext. P5 this writ petition has been filed.

2. Counsel for the writ petitioner mainly contended that assessment has not been completed by the jurisdictional assessing officer and therefore there was no legal sanction for levying penalty by Ext. P1 series of orders. This contention of the petitioner is seen to have been raised before the appellate authority itself, while considering the stay petitions. It was appreciating this contention as well that the appellate authority found that there is prima facie, a case for the appellant for an interim order of stay. This is a contention which is

required to be considered by the appellate authority when the appeals are finally heard and therefore at this stage, I am not going to pronounce on the correctness or otherwise of this contention.

3. Be that as it may, since by the impugned orders penalty is levied on the petitioner. I think the condition that 50% should be remitted as ordered by the appellate authority is an onerous one and requires to be modified. Accordingly, I dispose of this writ petition directing that Ext. P5 to the extend it requires the petitioner to remit 50% of the penalty imposed shall stand modified and the petitioner will be required to deposit only 25% of the penalty imposed for the years 2004-05 to 2007-08 and and the petitioner shall furnish security as ordered by the appellate authority for the balance amount. Ext.P5 order as modified herein, shall be complied with by the petitioner within three weeks from today.

Subject to the above modification, the writ petition will stand dismissed.

ANTONY DOMINIC
JUDGE

jan/-